

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Noranda Recycling Incorporated
8855 Washington Boulevard
Roseville, CA 95678

Respondent.

Docket HWCA 20050705

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and Noranda Recycling Incorporated, a Delaware corporation doing business in California (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent receives, handles, and treats, universal waste electronic devices (UWEDs) at the following site: 8855 Washington Boulevard in Roseville, California 95678 (Site).

1.3. Inspection. The Department inspected the Site on October 26, 2004.

1.4. Authorization Status. The respondent does not have a state permit to manage hazardous waste, but has notified the Department of their intent to operate as a UWED material handler under the requirements provided in California Code of Regulations, title 22, division 4.5, chapter 23 as related to the treatment of UWEDs.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Consideration. The parties wish to avoid the expense of litigation and to ensure prompt compliance with the statutes and/or regulations cited herein.

1.7. Full Settlement. This Order shall constitute full settlement of the violations alleged below, but does not limit the Department from taking appropriate enforcement action concerning other violations.

1.8. Admissions. The Respondent admits the violations described below.

VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1. The Respondent violated California Code of Regulations, title 22, section 66273.33(d)(3)(F)7.b. in that on July 8, 2004 the Respondent was treating UWEDs as described in California Code of Regulations, title 22, section 66273.33(d)(3)(D) without submitting to the Department documentation demonstrating financial assurance for closure pursuant to California Code of Regulations, title 22, section 66265.143 by no later than 30 days prior to treating any UWED material. The Respondent was unable to provide documentation demonstrating financial assurance for closure when requested during an October 26, 2004, inspection conducted by the Department.

2.2. The Respondent violated California Code of Regulations, title 22, section 66273.33(d)(3)(F)7.c. in that on July 8, 2004 the Respondent was treating UWEDs as described in California Code of Regulations, title 22, section 66273.33(d)(3)(D) without submitting to the Department documentation demonstrating financial responsibility for liability pursuant to California Code of Regulations, title 22, section 66265.147 by no later than 30 days prior to treating any UWED material. The Respondent was unable to provide documentation demonstrating financial responsibility for liability when requested during an October 26, 2004, inspection conducted by the Department.

SCHEDULE FOR COMPLIANCE

3. Respondent shall comply with the following:

3.1.1. The Respondent shall maintain compliance with California Code of Regulations, title 22, section 66273.33(d)(3)(F)7.b. On November 24, 2004, the Respondent provided to the Department documentation demonstrating financial assurance for closure as required in California Code of Regulations, title 22, section 66273.33(d)(3)(F)7.b. Violation 2.1 in the preceding section has been corrected.

3.1.2. The Respondent shall maintain compliance with California Code of Regulations, title 22, section 66273.33(d)(3)(F)7.c. On November 24, 2004, the Respondent provided to the Department documentation demonstrating financial responsibility for liability as required in California Code of Regulations, title 22, section 66273.33(d)(3)(F)7.c. Violation 2.2 in the preceding section has been corrected.

3.2. Submittals. All submittals from Respondent pursuant to this Consent Order shall be sent to:

Mr. Paul S. Kewin, Section Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules,

or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified, or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the Site, in the surrounding area, or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as is needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended by the term of such Stop Work Order.

3.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent

may be required to take such further actions as are necessary to protect public health or welfare, or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

3.9. Sampling, Data, and Document Availability.

3.9.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data (including, without limitation, the results of any such sampling, testing and monitoring) generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

3.9.2. Respondent shall allow the Department and/or its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

(a) comply with that request,

(b) deliver the documents to the Department, or

(c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.10. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 4.3, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that were submitted by Respondent pursuant to the violations set forth above, and/or this schedule for compliance, and were approved by the Department are hereby incorporated into this Order.

3.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Action. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.3. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.4. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

4.5. Time Periods. "Days" for the purpose of this Order means calendar days.

4.6. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order.

PENALTY

5.1. Respondent shall pay the Department a total penalty of \$7,560.00.

5.2. Respondent's check shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered within 30 days of the effective date of this Order together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check(s) shall be sent to:

Mr. Paul S. Kewin, Section Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

Dennis Mahoney
Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

5.3. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

EFFECTIVE DATE

6. The effective date of this Order is the date it is signed by the

Department. SIGNATORIES

7. Each undersigned representative of the parties to this Order certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind the Parties to this Order.

Dated: 4/6/05

(Original signed by Marcel Faucher)
Noranda Recycling Incorporated
By: Marcel Faucher
Vice President of Operations

Dated: 4/11/05

(Original signed by Paul S. Kewin)
Mr. Paul S. Kewin, Section Chief
Statewide Compliance Division
Department of Toxic Substances Control